

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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AREZOU MANSOURIAN; LAUREN
MANCUSO; NANCY NIEN-LI
CHIANG; CHRISTINE WING-SI NG;
and all those similarly
situated,

NO. CIV. S-03-2591 FCD EFB

Plaintiffs,

v.

MEMORANDUM AND ORDER

BOARD OF REGENTS OF THE
UNIVERSITY OF CALIFORNIA
at DAVIS; LAWRENCE "LARRY"
VANDERHOEF; GREG WARZECKA;
PAM GILL-FISHER; ROBERT
FRANKS; and LAWRENCE SWANSON,

Defendants.

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This matter is before the court on plaintiffs' motion for voluntary dismissal of class claims and a determination that notice to the uncertified class is not required pursuant to Rule 23(e) of the Federal Rules of Civil Procedure. Defendants have filed a statement of non-opposition to plaintiffs' motion. Having read and considered all the papers submitted in support of

1 the motion as well as other pleadings and papers on file in this
2 case,¹ plaintiffs' motion for voluntary dismissal is GRANTED.

3 Rule 23(e) of the Federal Rules of Civil Procedure does not
4 require notice of pre-certification dismissal except where the
5 court concludes that such notice is necessary for one or more of
6 the following reasons: (1) to protect defendants by preventing
7 plaintiffs from appending class allegations merely to obtain a
8 more favorable settlement; (2) to protect the class from
9 objectionable structural relief or depletion of funds available
10 to pay class claims, e.g., through collusive settlement; and/or
11 (3) to protect the class from prejudice based on their reliance
12 on the filing or pendency of the action. Diaz v. Trust Territory
13 of Pacific Islands, 876 F.2d 1401, 1409-10 (9th Cir. 1989).
14 Having considered each of the factors set forth in Diaz in the
15 circumstances of this case, notice to absent members of the
16 putative class is not required here.

17 First, no class has been certified and the named plaintiffs
18 in this case have determined not to further prosecute the class
19 claims in this action. Second, plaintiffs' class claims in this
20 action never sought damages on behalf of the members of the
21 class. Class relief was limited on all claims to equitable
22 relief in the form of injunction and declaratory relief.
23 Moreover, the proposed dismissal in this case is unconnected to
24 any settlement favoring the named plaintiffs. Third, after the
25 court denied plaintiffs' motion for leave to amend the complaint
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27 ¹ Because oral argument will not be of material
28 assistance, the court orders this matter submitted on the briefs.
E.D. Cal. L.R. 78-230(h).

1 to add proposed plaintiffs, those individuals have determined to
2 file their own action on behalf of currently enrolled women at UC
3 Davis. Finally, any members of the proposed class will either be
4 in the position of current plaintiffs, having graduated from UC
5 Davis and no longer having a personal stake in injunctive relief,
6 or, if they are still students, will be represented as putative
7 class members in the new action.

8 As such, the court concludes that notice to the uncertified
9 class is not required. There is no prejudice to defendants or to
10 the putative class (1) because plaintiff and its counsel have
11 determined, based on their evaluation of this matter, not to
12 further prosecute the class claims in this case; and (2) because
13 of the expense and burden of providing notice to absent members
14 of the uncertified class. See George W. v. U.S. Dept. of Educ.,
15 149 F. Supp. 2d 1195, 1202 (E.D. Cal. 2000) ("Notice serves no
16 purpose when judgment is entered against a plaintiff before a
17 class has been properly certified and notified, for it is binding
18 only on the named plaintiff.") (citing Besinga v. United States,
19 923 F. 2d 133, 136 (9th Cir. 1991)). Accordingly, the class
20 claims in this action are dismissed.

21 IT IS SO ORDERED.

22 DATED: June 12, 2007



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24 FRANK C. DAMRELL, JR.
25 UNITED STATES DISTRICT JUDGE
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